CASE LAW UPDATE 2022: EMPLOYMENT/CIVIL PROCEDURE

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IOWA SUPREME COURT DECISIONS — 2021–2022 TERM

- **VROEGH V. IOWA DEPARTMENT OF CORRECTIONS, 972 N.W.2d 686 (Iowa 2022)** [1]

  - **Facts:** The Iowa Department of Corrections employed Plaintiff from 2009 to 2016. During his employment, Plaintiff was diagnosed with gender dysphoria and began transitioning. In 2015, Plaintiff asked multiple times for permission to use the male restrooms and locker rooms at work. Plaintiff suggested that the Iowa Department of Corrections could convert restrooms in an administrative building into unisex restrooms, which the Department of Corrections agreed to do. Plaintiff thought this arrangement was temporary, the Department of Corrections intended it to be permanent.

    Throughout Plaintiff's employment, he was provided insurance benefits under the State of Iowa Blue Access Plan, administered by Wellmark. The State pays for any covered benefits. In 2015, Plaintiff sought to have a double mastectomy, and the procedure was medically necessary to treat Plaintiff's gender dysphoria. The surgery was not covered (and was specifically excluded) under the insurance plan, although it would have been covered if it was sought for a medically-necessary reason other than treatment of gender dysphoria. Wellmark denied coverage based on the exclusions in the plan. Plaintiff sued the Department of Corrections, the prison warden, the Department of Administrative Services, and Wellmark for sex discrimination and gender identity discrimination.

  - **Procedural Background:** Plaintiff filed for partial summary judgment against all defendants, and Wellmark moved for summary judgment against the claims raised against it. The district court granted Wellmark's motion and denied Plaintiff's motion. The jury found in Plaintiff's favor and awarded $100,000 in past emotional distress damages related to the Department of Corrections and the prison warden's denying him use of the men's restrooms and locker rooms, and $20,000 in past emotional distress damages against the Iowa Department of Administrative Services for denial of health insurance coverage. The district court awarded Plaintiff attorneys fees in the amount of $348,227.24. The State appealed, and Plaintiff cross-appealed the dismissal of Wellmark. Wellmark moved to dismiss Plaintiff's appeal as moot based on his recovery against the State.

  - **Issues:** (1) Was the State entitled to a business judgment jury instruction?; (2) Was the State entitled to a same-decision jury instruction?; (3) Did the district court err in submitting both sex discrimination and gender identity discrimination to the jury?; (4) Was Wellmark subject to liability as a "person" under the ICRA?"; (5) Was Wellmark subject to liability as an "agent" under the ICRA?; and (6) Was Wellmark subject to liability as an "aider and abettor" under the ICRA?

[1] This summary does not address all issues presented in *Vroegh*.

- **Holdings:** The State was not entitled to a business judgment or same-decision jury instruction because its offered reasons for the decision — to pacify other coworkers or based on the acquiescence of the employee — were not legitimate, nondiscriminatory reasons for its decisions. The district court did err in submitting both sex discrimination and gender identity discrimination to the jury because "sex" discrimination does not expand to "gender identity," even using a broad construction of the ICRA. However, there was no prejudice and the Court did not disturb the damages award. The Court determined that Wellmark was not a "person" under ICRA because it was not in a position to "control" or "effectuate" the denial of benefits to Plaintiff — the State did. Wellmark was also not an "agent" or "aider or abettor" because it did not have any authority to alter the coverage under the plan and did not provide "substantial assistance" to the State.

- **Why It Matters:** This case provides the Court's approach to statutory interpretation of the ICRA, a statute with a directive that it is intended to be "construed broadly." The Court determined that the ICRA's "construed broadly" provision "doesn't allow courts to ignore the ordinary meaning of words in a statute and to expand or contract their meaning to favor one side in a dispute over another." Based on that reasoning, the Court concluded that the sex discrimination claim should not have been submitted to the jury. This case also reinforces that in order to get a business judgment or same-decision defense instruction, the defendant must identify a legitimate nondiscriminatory reason to support its decision. Finally, the opinion provides an analysis for whether a defendant is a "person," "agent," or "aider and abettor" under the ICRA.

- **ACC HOLDINGS, LLC V. ROONEY, 973 N.W.2d 851 (Iowa 2022)**

  - **Facts:** Defendant failed to pay his taxes during the 2015 year. His house went to tax sale, and his house was purchased for the amount of tax then unpaid. Defendant did not redeem his house, and ACC Holding, LLC (ACC) obtained a tax deed. ACC arranged for its first three-day notice to quit on September 22. ACC filed another notice to quit on December 15.

  - **Procedural Background:** ACC filed a forcible entry and detainer (FED) action on October 1 in the small claims division, with the September 22 notice to quit attached. Defendant moved to dismiss the first FED action for lack of subject matter jurisdiction. ACC voluntarily dismissed the FED action without prejudice before the small claims court could rule. One day before the dismissal was entered, ACC filed its second FED action in the district court itself, again attaching the September 22 notice to quit. On December 22, ACC voluntarily dismissed the second FED petition. On December 21, ACC brought a third FED petition, this time attaching the December 15 notice to quit. Defendant moved for summary judgment on the basis of the two-dismissal rule of Iowa Rule of Civil Procedure 1.943. The district court denied Defendant's motion for summary judgment, and the Supreme Court retained the appeal.

  - **Issue:** Did the two-dismissal rule bar ACC's third FED Action?

  - **Holding:** The two-dismissal rule under Rule 1.943 barred the third FED action because it involved the same transaction as the first two.

- **Why It Matters:** The Court provides a succinct way of analyzing whether a third lawsuit involves the same transaction as the first two lawsuits: does it present new conduct (i.e., conduct that that didn't exist before) or an additional breach?

- **CARLSON V. SECOND SUCCESSION, LLC, 971 N.W.2d 522 (Iowa 2022)**

  - **Facts:** On January 3, 2020, Plaintiff attempted to file a personal injury petition, but the clerk of court rejected the proposed filing for failure to include personal identifying information in the cover sheet. On January 9, 2020, one day after the statute of limitations expired, Plaintiff filed the personal injury petition with a complete cover sheet.

  - **Procedural Background:** Defendant moved to dismiss the petition on statute of limitations. Plaintiff argued that the filing should relate back to the rejected filing. The district court granted summary judgment, the court of appeals affirmed, and the Iowa Supreme Court granted further review.

  - **Issue:** Whether a petition will relate back to a rejected filing where the filing was rejected for failure to include identifying information that is mandated by statute and rule.

  - **Holding:** The petition with a completed cover sheet did not relate back to the rejected filing because a party's identification information is administratively necessary to initiate a case.

  - **Why It Matters:** The Court's analysis of relation back is fact intensive. Here, failing to include identification was considered a "major error" in part because a party's identification information is required by statute and by rule. The Court also emphasized that the proposed filing was returned to Plaintiff on January 6, before the limitations period expired. The Court determined that the three-day delay in resubmitting the filing was not prompt enough to support relation back.

SELECT IOWA COURT OF APPEALS DECISIONS — 2021–2022 TERM

- **CALDWELL V. CASEY'S GENERAL STORES, INC., No. 21-0775, 2022 WL 610362 (Iowa Ct. App. Mar. 2, 2022)**

  - **Facts:** Plaintiff was a store manager who had a relationship with an assistant manager at the store Plaintiff managed. The assistant manager reported the inappropriate sexual relationship, and Plaintiff was terminated for violating a non-fraternization policy. Plaintiff sued her employer for sex, age, and disability discrimination.

  - **Procedural Background:** The employer moved for summary judgment, and Plaintiff only resisted on the sex-discrimination claim, arguing the employer's reason for terminating her was pretext for discrimination because it treated her differently than a similarly situated male employee who violated the same policy. The district court granted summary judgment.

- **Issue:** Was Plaintiff able to demonstrate pretext by showing that a similar situated employee was treated differently?

- **Holding:** Plaintiff's identified comparator was not similarly situated because they were in different positions, with different responsibilities, and the circumstances of their violations differed.

- **Why It Matters:** This case demonstrates the high bar to establish a similarly situated comparator. Further, it rejected Plaintiff's argument that whether a person is similarly situated is always a question of fact for the jury to decide.

SELECT EIGHTH CIRCUIT OPINIONS — 2021–2022 TERM

- **KING V. GUARDIAN AD LITEM BOARD, __ F.4th __, 2022 WL 2541905 (8th Cir. 2022)**

  - **Facts:** Plaintiff was employed by the Guardian Ad Litem Board of Minnesota. On October 5, 2017, he sent a letter to his supervisor expressing concern that the number of open cases in certain judicial districts was exaggerated, which led those districts to receive outsized financial allocations. In November 2017, Plaintiff attended a training, and a participant commented that Plaintiff had harassed someone. Another participant was aware that there had been an improper relationship between Plaintiff and a prospective guardian ad litem years before. These allegations were reported to Plaintiff's supervisor, who arranged for an internal investigation, and later an external independent investigation. These investigations concluded Plaintiff engaged in gross misconduct. Plaintiff was terminated the following spring based on the findings of the investigations. Plaintiff sued for race, sex, and age discrimination and retaliation.

  - **Procedural Background:** The Guardian Ad Litem Board moved for summary judgment on all counts, arguing that Plaintiff failed to establish a prima facie case for discrimination or retaliation. The district court granted the motion, concluding that Plaintiff had failed to make a prima facie case for discrimination or retaliation, and, even if he had done so, the employer had demonstrated a legitimate, nondiscriminatory, and nonretaliatory reason for firing him that was not pretextual.

  - **Issue:** Was the employer's reason for terminating Plaintiff pretextual?

  - **Holding:** The employer's reason for terminating Plaintiff —evidence that Plaintiff had engaged in gross misconduct — was a legitimate, nondiscriminatory and nonretaliatory reason for Plaintiff's termination.

  - **Why It Matters:** This case provides strong analysis about the pretext standard for retaliation and discrimination under the *McDonnell Douglas* burden-shifting framework. Establishing pretext "'requires more substantial evidence than it takes to make a prima facie case'" and 'evidence of pretext and discrimination is viewed in light of the employer's justification.'" *King*, 2022 WL 2541905, at *4 (quoting *Phillips v. Mathews*, 547 F.3d 905, 912–13 (8th Cir. 2008)). In this case, the employer's justification was strong and supported by evidence. Plaintiff's

sixteen years of employment with few issues could not save his claim. The Court stated that "evidence of a strong employment history will not alone create a genuine issue of fact regarding pretext and discrimination." *King*, 2022 WL 2541905, at * 4 (quoting *Main v. Ozark Health, Inc.*, 959 F.3d 319, 326 (8th Cir. 2020)). Further, the proximity between Plaintiff sending the letter to his supervisor created at most a "dubious" inference of discrimination because the allegations of misconduct arose between Plaintiff's sending the letter and his placement on administrative leave. Against this backdrop, the Court rejected Plaintiff's arguments, repeatedly noting where Plaintiff had failed to explain his claim or substantiate his allegations with facts or evidence.

- **MULDROW V. CITY OF ST. LOUIS MO., 30 F.4TH 680 (8th Cir. 2022)**

    - **Facts:** Plaintiff was employed by the St. Louis Police Department. Beginning in 2008, she was placed with the Department's Intelligence Division, where she worked on public corruption and human trafficking cases, served as head of the Gun Crimes Intelligence Unit, and oversaw the Gang Unit. The Federal Bureau of Investigation deputized Plaintiff as a Task Force Officer (TFO) for its Human Trafficking Unit, which allowed her to use an FBI badge, wearing plain clothes, access an unmarked FBI vehicle. maintained a traditional Monday through Friday schedule. In 2017, Plaintiff was transferred to the Fifth District, where she had an administrative role, including responding to calls for service for crimes such as homicides, robberies, assaults, and home invasions. She also was required to have a rotating schedule, including weekends. Plaintiff did not immediately return her FBI-issued vehicle or badge. When she did, the FBI revoked her TFO status. Plaintiff filed a complaint alleging gender discrimination and retaliation in violation of Title VII and state law discrimination claims.

    - **Procedural Background:** Defendants moved for summary judgment on all claims, which was granted as to the Title VII claims. The district court declined to exercise supplemental jurisdiction over the state claims, which were dismissed without prejudice.

    - **Issue:** Was Plaintiff's transfer an adverse employment action?

    - **Holding:** Plaintiff's transfer was not an adverse employment action because her pay and rank remained the same, she admitted it did not harm her future career prospects, and any lost benefits from the transfer were replaced with equivalent benefit opportunities at her new position that she chose to not pursue.

    - **Why It Matters:** The Court's holding relied in part on its determination that plaintiff's self-serving deposition testimony was "not persuasive such that it is capable of defeating summary judgment." *Muldrow*, 30 F.45h at 688. Additionally, the Court reaffirmed that the employer's failure to transfer her back to her old position was not discriminatory because "an employer is not tethered to very whim of its employees." *Id.* at 692. Finally, the Court concluded that the "cat's paw" theory is not applicable where the alleged decisionmaker was not part of the organization sued for discrimination.